

NOT TO BE PUBLISHED

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

DERRICK ALAN TULL,

Defendant and Appellant.

C073650

(Super. Ct. No. 98F04324)

Pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), appointed counsel for defendant Derrick Alan Tull has asked us to review the record for arguable issues in this appeal from the denial of his motion to modify his three strikes sentence pursuant to Penal Code¹ section 1170.126. Because we find defendant is not entitled to *Wende* review, we dismiss the appeal as abandoned.

¹ Further undesignated statutory references are to the Penal Code.

BACKGROUND

On December 4, 1998, defendant pled guilty to robbery and admitted having two prior strike convictions. On January 24, 2013, he filed a motion for resentencing of his 25-year-to-life sentence pursuant to the Three Strikes Reform Act of 2012. (§ 1170.126.) The superior court denied the motion, finding defendant ineligible for resentencing because robbery is a serious felony. (§ § 1170.126, subd. (e)(2), 1192.7, subd. (c)(19), 667.5, subd. (c)(9).)

Defendant filed a timely notice of appeal from this order.

Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Counsel advised defendant of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days have elapsed, and we have received no communication from defendant.

DISCUSSION

Review pursuant to *Wende* or its federal constitutional counterpart *Anders v. California* (1967) 386 U.S. 738 [18 L.Ed.2d 493] (*Anders*)) is required only in the first appeal of right from a criminal conviction. (*People v. Serrano* (2012) 211 Cal.App.4th 496, 500-501 (*Serrano*); *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 536-537 (*Ben C.*); *Pennsylvania v. Finley* (1987) 481 U.S. 551, 555 [95 L.Ed.2d 539, 545-546].)

The right to *Anders/Wende* review applies only at appellate proceedings where defendant has a previously established constitutional right to counsel. (*Serrano, supra*, 211 Cal.App.4th at p. 500; *Ben C., supra*, 40 Cal.4th at pp. 536-537.) While a criminal defendant has a right to appointed counsel in an appeal from an order after judgment affecting his substantial rights (§ § 1237, 1240, subd. (a); Gov. Code, § 15421, subd. (c)), that right is statutory, not constitutional. Defendant is not entitled to *Wende* review in such an appeal. (See *Serrano, supra*, at p. 501 [no *Wende* review for denial of post conviction motion to vacate guilty plea pursuant to section 1016.5].)

Applying *Serrano*, here defendant has no right to a *Wende* review of the denial of his motion to modify his sentence pursuant to section 1170.126. Because neither defendant nor his counsel raise any claim of error, we must dismiss defendant's appeal as abandoned.

DISPOSITION

The appeal is dismissed.

DUARTE, J.

We concur:

HULL, Acting P. J.

HOCH, J.